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WORKSHOP TO SOLICIT COMMENTS ON PROPOSED PERMANENT REGULATION FOR LOAN MODIFICATION CONSULTANTS, FORECLOSURE CONSULTANTS AND COVERED SERVICE PROVIDERS R120-10

Date: **November 5, 2010**

Time: **9:00 am**

Location:

Las Vegas
Grant Sawyer Building
555 E. Washington Ave.
Room 4412
Las Vegas, NV 89101

Video-Conferenced to:
Legislative Counsel Bureau
401 S. Carson Street
Room 2135
Carson City, NV 89701

Present:

In Las Vegas:

Commissioner Joseph L. Waltuch
Susan Slack – Administrative Assistant II

Chris Giddings, Ian Hirsch, Robert Citron, Lou Filippo, Michael Richman, Gilbert Miller, Lindsay Stadtlander, Armando Tully, Chellsea Tully, James Kimsey, Michele Johnson, David Young, Marco Chaidez, Linda Williams, David Krieger

In Carson City:

Sheila Walther- Supervisory Examiner
Colleen Hemingway – Deputy Attorney General

Leslie Moon, Wayne Snyder, Amy Caramazza, Max Haynes

Discussion:

Commissioner Waltuch: My name is Joe Waltuch. I am the Commissioner of Mortgage Lending. Today is a regulation workshop for regulation R120-10. It is designed to solicit comments in anticipation of proposed amendments to our current regulation R052-09 which was effective 8/22/09 which has not yet been put in the books or codified in the Nevada Administrative Code. Does anybody need any special assistance of any kind? Ok. Most of these provisions are technical corrections, but there are some I think that you may wish to discuss. We will do this section by section if that's Ok with everybody.

Sheila Walther: Joe, did you receive any written comments that asked to be put into the record?

Commissioner Waltuch: Yes. We received one from Tracie Hamman at IModifications. As we go through the proposed draft, in the appropriate sections, I will read her comments into the record. With that in mind, we will start with Section 1. You will note that all of these refer to the previous Section in the R052-09 regulation because, as I said, it has not been codified into the Nevada Administrative Code with an actual code section number. The first one is to amend Section 19 to take out the requirement for the fingerprints. The reason this is coming out is because – not that we don't want to do fingerprints, but it takes a statutory requirement to be authorized to run the fingerprints. We have been advised through the FBI and the Department of Public Safety that this has to be in a statute rather than in a regulation. We will be proposing a change in the statutes in the next session to reincorporate this back into the law, but it can not be in a regulation. So that's why it's coming out. Does anybody have any comments on that?

Sheila Walther: Joe, Tracie did comment and ask how that would be affecting background checks. We are still going to be doing background checks which include checks of criminal activity. We have a contract with Nevada Gaming who conducts these investigations for us in lieu of the fingerprints.

Commissioner Waltuch: Thank you. The next change is to add to the application requirements compliance with the SAFE Act. Tracie Hamman's comment on that is "I'm not really sure why this would apply to CSPs and how it would benefit, why there would be a bond and what would be and how does this adversely affect current licensees at all?" The way this is worded would not require registration with the NMLS at the present time. It would require compliance with the SAFE Act if and when compliance with the SAFE Act at the federal level becomes necessary for our licensees. I will point out that the Department of Housing and Urban Development has a proposed regulation that would equate loan modifications to loan refinances. If that proposed regulation is adopted, basically, loan modifications will be subject to RESPA. They will become subject to the

SAFE Act which in turn will then with this provision require registration through the Nationwide Mortgage Licensing System. That's the purpose of it. If anybody has a comment please come up front, click the MIC button and identify yourself.

Lou Filippo with Accelerated Training Systems: If we did move forward with the NMLS, would that mean that the three separate licenses would then go away and we would just then have one license? Right now it's kind of convoluted the way we have 3 licenses.

Commissioner Waltuch: It's a good question. Right now, at this point I don't have an answer to it. Technically speaking, what it would require is that all our licensees become licensed mortgage agents. How we would structure this, I don't know at the present time. Sheila, do you have a thought on that that you want to put on the record?

Sheila Walther: As you just indicated, it would take a statutory change, but if the SAFE Act and HUD's rules come out that they are required to follow that, it may be determined that everything falls under the current mortgage chapters. They would expand the definition of a mortgage broker, banker or agent to include these types of activity potentially.

Lou Filippo: So, from what I understand then, it could be, but we don't know.

Commissioner Waltuch: We don't know.

Lou Filippo: A mortgage agent – maybe it would include – a mortgage agent would be able to provide those services.

Commissioner Waltuch: That remains subject to debate. At this point, HUD has not come out with anything final, so we don't know. We are just putting it here just in case they do, so that we don't have to do this again.

Lou Filippo: Ok.

Sheila Walther: We don't know exactly when HUD's rules will come out either. Hopefully, they are out during the session.

Commissioner Waltuch: *If* or when HUD's rules will come out…A lot of this has to do with the passage of the Dodd/Frank bill which is transferring a lot of the functions of HUD over to the new Consumer Financial Protection Bureau. As far as I know from Washington, everything is up in the air right now.

Sheila Walther: HUD did indicate that they would give states ample time to make changes to their laws if their rules come out not timely. So, if they were to come out late in the session and we could not change our chapters, they understand that we meet every two years and they would allow us to continue to potentially wait until the chapters get changed in the following session. So if they don't come out timely, we may be looking at this a couple of years from now instead.

Commissioner Waltuch: Again, it is all speculation.

Lou Filippo: Right. At the current time, nothing will change as far at the licensing of the Covered Service Provider, Foreclosure Consultant and Modification Consultant and relicensing. Everything would be in tact as far as the MLD being in control of it.

Commissioner Waltuch: As far as we know. Whatever would happen would take a legislative change and the Legislature doesn't meet until next February. Moving right along, I have just gone to page 4. One of the changes we wish to add is that in order to be licensed, all monies owed to the Division have been paid. I think you guys can understand that one. The next change right below that basically conforms this Section to the identical requirements we have for bankers, escrow agencies and for brokers. We are making all of our regulations consistent. Any comments?

Sheila Walther: I just want to point out that Tracie Hamman's comments did include something about the financial responsibility Section. She wants to know how this is different than what we do currently as far as reviewing applications and would this adversely affect current licensees. Someone that currently holds a license that doesn't meet the standards for financial responsibility that are embedded in for the initial license.

Commissioner Waltuch: Ok. Thank you. We will enter Tracie's written comments into the record. It appears that I am going to be forgetting to quote her throughout this entire thing. So I apologize.

Sheila Walther: That's Ok. I'll watch you.

Commissioner Waltuch: Ok. The next change down below needs some corrections as well. This has to do with the conviction in a federal or military court for a felony. Again, we are making this consistent with all of our other chapters that we regulate. This is language that basically comes out of the federal SAFE Act as well, but it has got some typos. Sheila, I am going to ask you to note for corrections here. This is in that subsection D2, in the first line, at the end of it, it says "to, a felony". After the comma, strike out the words "a felony" all the way down to "nolo contendere to" three lines down.

Sheila Walther: Wait. Hold on just one second, because I am looking at a color copy and it may be a little bit different than what you are quoting. I apologize.

Commissioner Waltuch: We are on page 4, Item 2 at the bottom, subsection 2. Strike out "a felony" at the end of the first line. Take out the entire next 2 lines and then on the fourth line, strike out "guilty or nolo contendere to" because it is repetitious.

Sheila Walther: I do want to point out that I would like to keep in the moral turpitude. This is the bare minimum of SAFE. I will point out that most states have included moral turpitude as grounds for consideration for issuance of a license. Serious moral turpitude crimes such as murder or rape or those types of crimes are being considered by most states at least for their issuance of their mortgage agents licenses. Keep moral turpitude somewhere in there that is appropriate as a consideration for issuance of a license.

Commissioner Waltuch: Alright. We can consider dropping that down to the end of the paragraph. We will take a look at wording on it. We are also going to add something to this. Where it says, "pled guilty or nolo contendere to any felony in a domestic, foreign or military court" add the following "or entered into any plea agreement regarding such a felony". The reason for this addition is, in my opinion, because the federal law and the state law which is what we have embodied in this regulation, do not take into account the fact that a person can enter into a plea agreement, but before it has been ordered by a court as a conviction, either applies for a license or we wish to take an action against the licensee because they have admitted in writing in a plea agreement that they have been convicted or they have done the deeds warranting a felony conviction. So we are adding in if they have entered into an agreement where they admit to a felony. Would anybody like to comment on that? Ok. We are on to page 5. Again, these are basically designed to parallel our other statutes both in the discipline for people or the non-approval of a license for people who have been revoked or suspended in other states, as well as the demonstrating of financial responsibility for those people that own 25% or more of the company. Rather than going through each item, I will just ask if anybody has any comments on those. Hearing none, Sheila, on item 8 on page 5 we have a correction.

Sheila Walther: Do you mind if I just clarify one thing? 6 and 7 set out the financial responsibility standards separately from someone that is an owner or designated manager of the office as opposed to an associated licensee so the bar is much higher for the company as far as how we might look at that financial responsibility criteria as opposed to an associate who is going to be reporting to an independent licensee and would not have the same access to funds or would be overseen by the independent person. I just wanted to point out that there are two separate standards. I know that I have gotten some calls from associated licensees that are concerned that they may have to qualify under subsection 6, but 6 and 7 qualify them separately. You wanted to comment on 8?

Commissioner Waltuch: Yes, on 8 where it says "For purpose of these subsections 6 and 7" actually, it should read "For purpose of subsection 5". That gets us up to the bottom on page 6. It is really just corrective language. It does not change the fact that a person can post substitute collateral instead of a bond. Page 7, Item J – we just want to make sure that somebody has recent experience in the industry. That is why we put in within the immediately preceding 5 years in order to be licensed. The other change is basically a technical change as to when the date of the additional requirement letter response is due. At the bottom of page 7 you will note we are changing around the licensing renewal dates from July 1st to December 31st. That again is consistent with all of our other chapters at the point except escrow. Sheila, is escrow on December 31st?

Sheila Walther: No. They are still at June 30th. I think we are doing this in the potential anticipation of the NMLS. In NMLS all licenses expire on December 31st, so we are going to be changing our bankers and brokers and loan officers to that date as well. I just want to point out that depending on this change, the effective date of these licenses may still expire on July 1st. I don't know if the Division has made a determination on how they are going to address when this will become effective – Whether they will still expire on July 1st and then again have to expire on December 31st.

Commissioner Waltuch: Right. I was getting to that. Just so everybody is aware of the fact that what we have done for brokers is that if a licensee's license expires anywhere between January 1st and June 30th, that license has to be renewed and then again on December 31st. So for those people whose licenses expire on the first 6 months of the year, they will pay 2 renewal fees. If the license expires on or after July 1st of the year, then we will extend the license until December 31st without an additional license fee.

Sheila Walther: I just want to point out that the difference is that broker's licenses expire on June 30th and we, for fiscal needs, are requiring our mortgage brokers to renew in June. They have to have everything in by May and then renew again in NMLS in December so that we do capture those renewals for the case of our brokers so we have not really discussed this out fully as to whether or not that date may be different as it affects these types of licenses since they expire on July 1st as opposed to the June 30th date that mortgage brokers licenses expire. I just want to point out there is that one day difference in the laws. So, that would in essence allow these types of licenses to go an extra 6 months before the revenues come in. Was that discussed?

Commissioner Waltuch: It hasn't been discussed for this except for here. It has been discussed for our broker and banker licensees. The basic reason that we chose July 1st as the date is that when you look at our other licensee base, roughly half expire prior to and roughly half expire after July 1st. So we know we can't make everybody happy. Some people are going to be impacted twice. Some people will not. The fact that we will be changing the license renewal dates in order to comply with NMLS, assuming you all have to be on the NMLS at some point, that's the reason for this. Any comments?

Lou Filippo: So would the modification people then, after July 1st – they would not have to apply again. Anybody before July 1st? Is that the cut off date then?

Commissioner Waltuch: Well, that's the proposed cut off date. These regulations obviously have to go through the permanent regulation hearing and we may even have to have a second workshop. I don't know. The odds are these regulations will not be adopted in their final format until conceivably, at this point probably, until late January or February.

Lou Filippo: The way it is written right now, everybody's license expires on July 1st, so after that date, it wouldn't involve anybody. It's not like the mortgage arena when they are relicensed on their own personal anniversary date.

Commissioner Waltuch: Ok.

Sheila Walther: Mortgage agents expire one year after issuance, so when we were looking at the calendar and you alluded to the fact that half of them are before and half of them after, it was really in the context of those mortgage agents. We put that July 1st date so, I don't know how many brokers are in the audience, but to be able to require the brokers to renew twice for the revenue streams that the Division needs to operate. I am not sure whether that July 1st vs. June 30th whether the transitory language in these regulations will be different. This is just a workshop. We are just starting the process. If there are independent licensees that would like to comment, we would certainly appreciate any comments.

Commissioner Waltuch: Yes. And we will accept comments for the next week or so anyway. Just submit them in writing either by email to me or to Sheila. All of you should have our email address. This is exploratory at this point. We don't know.

Lou Filippo: Yes. I guess the point I was trying to make is it is going to involve either everybody or nobody. There is going to be one date that is going to be universal because that is the way it is set up now.

Commissioner Waltuch: It may be we don't even change the date. We don't know. We are trying to be consistent.

Leslie Moon with Modification Assistance Group – Just a simple solution – Why don't we try pro-rating them?

Commissioner Waltuch: The question is always simple. The answer however is not. It is something that I believe the Division had tried long before I got here and it turned out to be fiscally unworkable.

Sheila Walther: What we did is we – back in 2003 in the session, they passed a requirement that mortgage agents instead of being registered, had to be licensed. They had to be registered until June 30th but then they had to be licensed on July 1st. So we attempted to facilitate that transition by pro-rating those fees for the months – again, mortgage agents expire 1 year after issuance. So, we would say you have got 4 months that you are going to be registered and whatever. In 8 months you are going to be licensed, so this is how much you pay. Nobody got it. They sent in the wrong amounts. It was a nightmare. That was a little bit different than these types of licenses. Independent associates all expire on July 1st, so you would have one fee for companies, one fee for the associated that they would pay. So, it wouldn't be near as confusing as what we tried back in 2003-2004 to transition the loan officers into the licensing process. Absent from this workshop from the Division are our accounting people. They have to be consulted to try to make an accommodation on how we need to fund the agency and the operations. Maybe we won't change the date. This is just the first workshop.\

Commissioner Waltuch: I will add to that. Assuming we do not change the date, should HUD actually rule that loan modifications are subject to the NMLS, we would have to change the date. It is something we are going to have to work out at some point.

Ian Hirsch with Fortress Credit Services: Regarding this change over to the change of the date, it is important to note that it is not just the $185.00 and then the $25.00 AG assessment; it is going to be additionally another couple hundred to Lou over here and everything that goes along with it. Most of us independent licensees pay for the associated licensees. A good number of the associated licensees are just hourly workers that are working for us in contact with the bank and they are not able to pay these fees. So each individual that we have to relicense and sometimes now what we are proposing is twice in one year which we have already done twice in the previous year, when we originally licensed by October of 2009 and then had to relicense everybody by May of 2010. We would then be relicensing again – twice in a single 12 month period. It would be a major financial impact to a small business owner. It will absolutely be crushing because if you are asking us to relicense, you are also going to be asking us to resubmit additional continuing education which is several hundred dollars per individual plus another $185.00 per individual, plus $25.00 per individual which will have absolutely a devastating impact on a small business owner.

Sheila Walther: As far as the mortgage agents changing, we are going to accept the same 10 hours that they took for the renewal. Say they expired before June 1st and then they have to renew on NMLS in December, we will accept those same 10 hours for their continuing education purposes. Our law just states, at least in the B chapter that education as to be taken within the previous 12 months. So if someone took it in November and tried to use it for whatever and then they renewed in NMLS after that, we wouldn't be able to count it. In most cases, people use those same 10 hours at least on the broker and I anticipate if we change this we would give that same consideration to the associated requirements for education.

Commissioner Waltuch: Again, there is no guaranty that we are going to change the date. If nothing else, this is just to call to your attention that should HUD's rules be adopted, the date will have to change. We are just trying to get prepared. The next change is a technical change in language on page 8, same on page 9. What we are doing by the way is getting rid of posting the license for the associated licensee. We are not even going to be issuing paper licenses are we Sheila?

Sheila Walther: No. We stopped issuing paper licenses to mortgage agents some time ago. Our website denotes whether they are active or not and the public can look that up. It is more cost efficient not to have to mail those licenses out. If people change associations, we have to re-mail them out. The more effective way is to have our website denote whether someone is licensed or not. We update our website every single morning, so it is real current information.

Commissioner Waltuch: The next 3 changes are all technical changes. We are changing the date when assessments are due to us from the date that you receive the bill to the date the letter is mailed.

Sheila Walther: That saves us having to send the notice out certified mail to determine when you received it, so again that is a cost savings to the Division.

Linda Williams with Mortgage Trainers of North America: My understanding is that this workshop is to try to get everyone in compliance with the SAFE Act in case HUD adopts that. I was just wondering if that would be affecting these hours, since these hours don't meet the SAFE Act requirement hours for the continuing education.

Commissioner Waltuch: Good question. We don't know. We will have to look at that. Thank you for bringing it to my attention.

Linda Williams: Just give us time to write the classes. Ok?

Sheila Walther: When we were drafting these initially, we were told that we had to have 3 separate license types and there was going to be some different requirement between the 3. What we did was use the education as the means to distinguish the requirements for the initial licensee as well as the continuing education. It will be all off the table if HUD comes out that this is a requirement that they comply with the SAFE Act and then everybody will be on the same page. There will be one type of license probably at least at the associated level where the pre-licensing is required or the continuing education is required.

Commissioner Waltuch: Back to page 12. We are amending the regulation, as we have done for other regulations as well, to delete a formal hearing process in the event you are dissatisfied with an examination rating. You get a second crack at it but it will be informal. It will not be a formal hearing which will have to go to the hearings division and then it's appealable to district court, etc. Sheila, I don't know if there has ever been a formal hearing made on an examination report since the Division was created.

Sheila Walther: Not that I am aware of – no. Not in my 14 years anyway.

Commissioner Waltuch: Moving on. We are on to page 15. We are going to institute a Monthly Activity Report, much like we do for brokers and bankers as well, so that we can see what you guys are doing. It helps us in our examination scheduling and the examination process. Any comments?

Ian Hirsch: The requirement for this is – you know – Forget the fact that it's a burden but I would like to get on the record that it's burden. Will it be held private? Will it be open to public review? Will it be subject to a display in any way, shape or form? It doesn't clarify that in this section and it does not state whether or not it would be available for press purposes. Will it be confidential? Will the names of my clients be kept secret? Could this affect attorneys that have attorney/client privilege that are also licensees? This seems to be little bit different. I understand the purpose. It is the same purpose that you might have with a mortgage broker or a mortgage bank that you regulate, but in this type of situation there is a certain amount of humility that is involved in our business. When our clients come to us, it is not because they are proud to be getting a loan for a million dollar house. It is because they are trying to avoid a foreclosure. Certainly when a Notice of Default is filed, it becomes a matter of public record, but often times we try to avoid that from happening. If this information is not protected property, this is just another way to have our client's personal laundry aired.

Commissioner Waltuch: I guess the easiest way to respond to that is by analogy to the reports that we require for our brokers and bankers. They are confidential. Period. I guaranty you that those clients don't want their names made public either. Sheila, did you have any comments?

Sheila Walther: They have always been confidential. We have been subpoenaed when we have worked jointly with investigations with the FBI. I know there is one situation up here in the North were we did provide these for purposes of that investigation to the FBI, but as far as disseminating out – they are under agreements where everything is to remain confidential. It needs to be. You can rest assured that this is not something that is going to be disseminated out where someone can call and request to see a report. It has been tried many time when they want to see who the high producers are or maybe lure a loan officer away from someone. But these are confidential. I just want to point out that the manner we do this in is they are electronic. They are submitted to an email address that the Division maintains in an electronic form in an Excel document. There will be a prescribed format that you would send it. It will be due by the 15th day of the month and then we attach it to your record electronically. So there is not hard copy. It is all saved and secured in our database.

Commissioner Waltuch: We should add that the form is not very detailed. By comparison, go to a state like Illinois and take a look at their forms.

Ian Hirsch: Thank you. Good.

Commissioner Waltuch: Ok. Moving on. Page 16. This just adds the mailing address of the independent licensee on all of the correspondence regarding the trust accounts. We are changing the bond language – the signature line on page 18 to conform to other requirements in the Nevada statutes. We are making all of the bond language, I think the State will do that as well, read the same across the board. It doesn't change who signs your bonds. We are deleting, on Page 19, if any of you are applicants or know someone who will be an applicant for a license after these regulations become permanent, this section will impact you. What we are doing is we are doing away with substitute collateral in lieu of a bond for new applicants only. So if you are an existing applicant and you have posted a certificate of deposit instead of a bond that will continue to be Ok. For new people, once this regulation becomes effective, we are eliminating substitute collateral such as the CD, such as a letter of credit or putting up federal notes or whatever. We are doing this to be consistent with the requirements of the SAFE Act which does not permit substitute collateral. Any questions or comments?

Sheila Walther: Joe, I just want to make a comment that if HUD does come out and indicate that these activities are subject to the SAFE Act, the SAFE Act does not allow a substitute collateral and at that time we would have to set a new standard. I checked before the workshop and we do have 3 of our current independent licensees who maintain CDs in lieu of a bond. So, that's out in the horizon and it is subject to a lot of things changing.

Commissioner Waltuch: Let me just add to that. For those people that have posted a CD, should they be required to be under the SAFE Act and a bond be required, the CD does not get released. It has to stay on deposit for I believe it is a 3 year statutory period for claims to be made. That person would not only have to keep their CD in place, but they have to go out and get a bond as well. So, there will be an extra expense. Now would anybody like to comment?

Sheila Walther: I do want to point out as well that I think we are striking out, because currently in 052 there is the provision that you can hold it only for a one year period and that is being stricken. We are not there yet, but you will see the provision as you move forward.

Commissioner Waltuch: The next section down on page 19. Tracie Hamman has a comment. We are adding a provision that the Commissioner, whoever the Commissioner is, may make a claim on the surety bond without the necessity of commencing an action in the court. Right now what you will note in the law is that in order for a person to claim on a bond they first have to go sue you, get a judgment against you that is uncollectible and then file a claim on the bond. We are not a person in that definition who can do that but yet we get, for lack of a better term, stiffed for our fees and costs as well and we want the ability to claim on the bond just like any other person has. So we are adding it to the regulation. I hope that makes sense to everybody.

Armando Tully with Home Loan Modifications of America – The question I am asking – maybe I am reading it wrong – this is giving you the power to just go against the bond without going to court first. Correct?

Commissioner Waltuch: Correct.

Armando Tully: How can that be legal?

Commissioner Waltuch: I have to defer to my counsel on that.

Colleen Hemingway: If it is in the statute or the regulation, it is going to happen and then you would then have the opportunity to seek judicial review I would imagine.

Commissioner Waltuch: Let me just add something first. We are proposing legislation as well for our banker, broker and escrow bonds that would permit us to make a claim on the bond after a hearing, not in a court, but after an administrative hearing. Maybe that is what we want to do is conform the language to require us to take the administrative hearing, go through the process, give you, for example, the opportunity to object, at which point, after a hearing, assuming we are successful, then we can claim on the bond.

Armando Tully: That I can understand.

Commissioner Waltuch: Like I said, that is in the other 3. That is for a statutory change. To be consistent we should do that here. I am going to take a note to do that.

Sheila Walther: Can I ask a quick question about that? If there are other claims being made by consumers against the bond and they have to go through the process of getting a court to award them that judgment so they can then in turn make that claim against the bond and say they owe the Division money as well. Are we going to consider the other claims that may be coming forth on that bond that have to go through that longer process to obtain that judgment in order to make that claim? I can see, a lot of times they may owe us money, but say they also have issues with homeowners out there that are attempting to recover their share of that bond for purposes of recovering their harm.

Commissioner Waltuch: I know how I would act on that. Generally it is first come, first served. The requirement in the statutes for our other licensees is that we have to be notified of a claim on the bond. If a consumer notifies us of a claim on the bond and then we file a claim on the bond, it would have to be disbursed, assuming the claims are upheld by the bonding company, they would have to be disbursed proportionately. So, I think the consumer is covered. Obviously, if we don't know of a claim and we file a claim, then we would be the only claimant on the bond so to speak. Does that make sense to everybody? No. Ok. Let's start this over. The current requirement in the law is that – generally what happens is that a consumer or a consumer's attorney will notify us in writing and request information as to who the bond company is or get a copy of the bond. They have to sue, get a judgment, not be able to collect it and make a claim on the bond. Are you Ok so far? We don't have that ability. For purposes of that statute in this regulation that currently exists we are not a person, so to speak, who has a right to go to court and get a judgment and file on the bond. We have no authority at present to claim on a bond. We want the authority to claim on a bond. So, we are proposing statutory changes for our other 3 licenses that would give us the ability to claim on a bond after an administrative hearing. Not a court hearing, but an administrative hearing. We want to do the same by regulation for out covered service bond requirement so that we have the ability to collect as well for money that is owed to us. In order for a person to put a claim in on the bond, they have to notify us. If we have notice – lets say 10 people file claims on the bond and 10 people get judgments, the bonding company will basically give the money to the court and say "Divvy it up in accordance proportionately to those 10 people." Under this regulation if we know about the claim, we would have to divvy it up in proportion as well. If we have never been notified we would get 100% of what is owed to us. So, I think the consumer is covered, but it requires the consumer to notify us if they have a claim on the bond. Again, if we don't know and we file a claim, we will be paid. It is that simple. I hoped that helped you a little bit.

Marco Chaidez with The MAC Group – I have a question in regards to the bonds and how they would - whereas the Division would be able to go in there and attempt to collect money on it. In what kind of circumstance would that happen? Can you give me an example? I understand the consumer side of things. I just don't understand in on the Division side and how we would be in a position where we would owe the Division money.

Commissioner Waltuch: Very simple. The Division goes out and does an examination of your company. The fee for the examination, lets say, is $5,000.00. You go out of business and don't pay us. The bond is still there. The liability on the bond is still there for 3 years. We want the ability to go after the bond to collect our fees. Same with a fine, except that would probably be under the Controller's office. But, the bottom line is there are circumstances where we don't get paid, generally when the company goes out of business and the owners leave.

Marco Chaidez: Another question in terms of bonds and consumers being able to come after us. Say there is a consumer. He has to sue you first. Do they have to give the Division notice as to what steps are being taken to try to resolve it? Or how is the Division involved in a complaint where the consumers and the attorneys want to go directly for the bond? How does this work? Is there a hearing? Is there a middle place where you would be able to talk or at least hear out both side of the story?

Commissioner Waltuch: Well, first of all, I am not giving legal advice. My counsel would jump all over me if I said I was. The bond – the requirements for the consumer are set forth in the regulation. Basically what it is is they notify us that they are filing a claim and they notify us of the court action. We are not part of it. We just sit and wait.

Marco Chaidez: My question is, when you receive the notification of that, is the Division going to notify us that you are in receipt of that notice?

Commissioner Waltuch: Good question. That has not come up before. Sheila, do you have a thought on that?

Sheila Walther: I don't think there is any requirement for us to notify them. I would assume if they are suing you, you would be aware of that when you get served with the action that the attorney is bringing on behalf of his client. You would be notified from that of the intent.

Marco Chaidez: Yes, I certainly know that, but however, because we are regulated under the Division of Mortgage Lending, you would think that we would get notified from both sides so that then we could try to arrange some sort of a meeting or at least …

Sheila Walther: We wouldn't be party to that action. They have a requirement to notify us of that action but we wouldn't be party to it. If there is something that bad we would probably be investigating it anyway. A lot of these issues start with complaints. We have investigators so we may be well aware of the issues. In complaints that we receive, we inform you and allow you the opportunity to respond. This would be down the road through that process. Maybe Colleen can share, but I don't think there is a requirement for us to notify you that we have had a claim on the bond.

Commissioner Waltuch: No. There is no requirement in the statutes for our other 3 licenses or in the regulation for that matter, but it is a very interesting concept.

Marco Chaidez: I think if I could just suggest something, I think it would have to go through or at least give the MLD some sort of notification so that then we get it directly from the MLD who is a neutral party instead of just the company if there is no complaints filed or nothing like that. I feel that the Division has to be informed; therefore, we have to get some sort of notice from the MLD so that we are all on the same page. Whether it be the consumer, the MLD and the licensed company.

Commissioner Waltuch: I took a note on that. It's a good thought.

Marco Chaidez: Ok. That's pretty much it.

Wayne Moon of Modification Assistance Group: Listen, I understand the Division's need to insure the fiscal – well, I understand what you are doing and why you are doing it, but I don't believe that any thought has been given to the actual issuers of the bonds. If the bond issuers feel that there is no way that they are going to be able to see their day in court, before a governing body of a particular state looks at this bond and says, "We are taking this bond." It is already difficult to get these bonds. You start throwing things that suggest that surety companies don't have a way of protecting themselves, we are never going to get bonds issued in this state.

Commissioner Waltuch: My simple response to that, and Colleen you will correct me if I am wrong on this, but the surety company is not a party to the law suit between the consumer and the insured and is there just as a guarantor of payment, so I am not so sure your comment is applicable. I can understand the requirement that we do a hearing, an administrative hearing, which would be equivalent to a small claim court action, but I have never heard of the surety coming in and arguing for one party or the other. Colleen, any thoughts?

Colleen Hemingway: I would agree with that however I think that they are at least potentially named in the complaint. So that they are going to be somehow subject to the court's order requiring a payment from the bond. I can spend more time looking into that. That is my general belief as to how they operate.

Commissioner Waltuch: Yes. Why don't you take a look at it because obviously if a consumer goes down to small claims court and sues a company, I am willing to wager they don't name the surety company?

Wayne Moon: I believe that you are right. They are probably not naming the surety company, but you can bet that the surety company is going to be protecting its interests as it pertains to whomever it is that they are insuring – i.e. the company that you are regulating. So, if this company is sued, the surety is going to step in and insure that either this company did wrong or did not do wrong or that is how they are going to pay. Now if you, as a governing body, say that "We don't have to go to court. All we have to do is have an administrative hearing" which you say is akin to a court action but it really isn't a court action, then this company, the surety company, is not going to have a way to protect its interests. The only reason I am saying this is, it is difficult to get a bond as it stands. If you guys over-regulate this to the extent that because of the fiscal condition that we are all in, that surety company or surety companies are going to look at that. They do look at that. They have to look at that. If they have a way of losing this bond because you guys go in after the bond without any kind of court proceedings, then we are going to have a difficult time securing these bonds.

Commissioner Waltuch: Well, I guess the question would boil down to getting some legal idea as to whether or not the bonding company actually has to be named in the lawsuit. Because if there is no requirement that they have to be named, then, whether it is an administrative hearing or a small claims hearing or a district court, the insurance company would never know.

Sheila Walther: I just want to point out that what we can do because this can be a significant economic burden on a small business in order to kind of evaluate that, we could reach out to sureties and kind of propose what we are intending to do and changing the requirement of the Division that can make a quicker claim on that bond and whether or not that would in fact raise those premiums or make it more difficult or make it more difficult for small businesses to get those in place. Again, this is a workshop. We are starting the process. I know, Joe, that you have some good connections in that industry that maybe we could explore how this might impact those premiums or the ability to get a bond.

Commissioner Waltuch: Yes. I think what we can do, Sheila, in a draft uniform request and send it to several brokers that we know of that have connections with various bonding companies and ask them to answer the questions. Let's see what we come back with.

Sheila Walther: We actually have a list of bonding companies that have been providing bonds for our brokers and for these. So we have a contact list as well. I think we could do a little leg work and see how this might affect them.

Commissioner Waltuch: Yes, because actually with proposed legislation next session to do the same thing, I would assume the legislature would want to know.

Sheila Walther: If we have a hearing maybe that is something that we would be required to notify the bonding company of this hearing and our intent to try to get a claim on the bond. We could do a lot more to see what is going to happen as well as make better disclosures out to the parties involved.

James Kimsey with Home Loan Modifications – Very quickly, we have some prepared comments which I will give the young lady over here. In reference to the bond, aside from what appears to be several due process questions or issues, one of the things that has come up in other states is the use of an E&O policy or a directors and officers policy or some other policy of comprehensive liability insurance – lets say a million to five million dollars. Premiums would be less. It would be easily accessible and the insurance company or the surety would actually be represented by their own counsel as an interested party. It would solve the problem. The bonding requirement, right now, has become so onerous to so many people that the ability to obtain these bonds is now being diminished as opposed to the ability to obtain a normal E&O policy. Something that could be written into the regulation as an alternative is to obtain a minimum liability policy for say one million or five million dollars. The cost would be approximately the same. It would be easier to access. All parties would be covered. And the surety itself would be represented.

Commissioner Waltuch: But for one small factor – E&O policies don't cover intentional acts. And our bonding statutes for our other 3 – it is done by statute and this is identical to the statute but in the regulation, does not exclude intentional acts and by posting and E&O policy you would be excluding intentional acts so the coverage would not be the same. And I would seriously think the Division would be against moving to an E&O.

James Kimsey: But the Division could also write into the requirement when a surety would define those intentional acts or they would be able to take some type of declaratory action to declare those intentional acts. Or you could actually clarify the definitions in some manner working with the insurance companies to keep the industry safe. Now understanding that a criminal act is one thing, but an intentional act or somebody just misappropriating a trust account in some manner which could be replaced easily with an E&O policy, it would seem that the E&O policy would be more preferable to trying to post a bond. And let's face it, if a house or a business licensed by Mortgage Lending is engaged in intentional acts of criminal activity, then probably what will happen is a $100,000.00 bond is simply not going to cover it. A million dollar E&O would.

Commissioner Waltuch: Not if it excludes the intentional act. It won't.

James Kimsey: It could be defined.

Commissioner Waltuch: What you are asking would require, I am sure, the major insurance companies or those companies that are writing bonds for this to redefine their policies and their requirements. It will not happen overnight, if nothing else. I understand what you are saying but I don't see it as being a realistic solution to the question.

James Kimsey: Well, hopefully, it can be considered though.

Commissioner Waltuch: Well, you have written comments?

James Kimsey: Yes I do.

Commissioner Waltuch: Is there anything else you want to comment on?

James Kimsey: No.

Colleen Hemingway: Joe, Sheila and I were just – in response to his commenting on the E&O policy, Sheila just mentioned that it is more likely than not that an entity may not make the insurance payments and therefore the policy may not be in effect at the time that somebody may need to make a claim against it and so it is a little bit different. It is more difficult with an E&O policy as opposed to a bond to protect the community and that is the reason, I believe, behind the legislature's creation of a bond as opposed to an insurance policy.

Commissioner Waltuch: Yes. To put it in simple terms, is the coverage is not the same as far as the 3 year period to make a claim on the bond which would not exist if an E&O policy were cancelled immediately. Is that right?

Colleen Hemingway: Yes.

Commissioner Waltuch: Any other comments? Ok. On page 21 we are also amending out the substitute collateral. At the bottom on page 21, Sheila, do you want to comment on that one?

Sheila Walther: Yes. We are going to be expanding and helping to clarify that previously in 052 it said that they have to break out each phase of service and say what they are going to do for each phase and what the cost is associated with that phase and the each phase must be reasonable to the total percentage of the costs that are assessed for all services. Unfortunately a lot were, for lack of a better term, frontloading. They would collect everything up front before a lot of the work was actually done and not always finish all of the work. So we have tried to qualify and we internally through the course of our examinations this, that if more that 50% of the total percentage of costs were collected before the completed package was delivered to the investor, we would not consider those early phases – those percentage of costs to be reasonable. We had one licensee that thought "Ok,

as soon as I drop it in the mail, I can keep 100% because I haven't collected more than 50%". So I think we are going to work on expanding that a little bit to make sure that there is some language that denotes that the other 50% is reasonable to the other services that are provided after that package is delivered to that investor. We don't want to say that you have to collect this for this or this for this. We just want to make sure that consumers are getting fair prices for the phases of the various services that are being provided. So we are helping give some clarity to what the division would expect as far as the assignment of the percentage of cost to phases. We are going to play with that language a little bit to take it beyond the delivery of that package through hopefully the final modification being in place. We did this in order for the industry – they do a lot of work. They do certain services, not to be out everything. Maybe they could not get a permanent modification. Maybe that had a great modification and the homeowner said "I'm too upside down and I don't want to do it. I am walking." And yet they have done all this work. So we recognize that and we allow for the various phases, but we want to make sure that they are reasonable to the work that is being done. In the case of the one, there was no incentive to finish all of the work because they have taken all of the fees. We want to make sure the homeowners are protected as well as our licensees.

Ian Hirsch: I have spoken to several independent licensees, some who are here today and some who are not. There is not one person that feels that this is a reasonable change to the policy. Additionally, there are some definite unintended consequences of this change. Namely, every single independent licensee, if this change is enacted, will have to go to the higher bonding level, which will have a direct financial impact on everybody in the room because if we can only take 50% of the fees prior to a modification offer being granted, then the amounts in our trust account will raise and continue to go up until the point where 1) we will have to get a higher bond amount and 2) it creates and additional liability for the company just to keep additional money and not being able to use it. I understand the intent. The intent here is to protect consumers and I get that. Everybody in this room as a desire to make sure that this industry has a good name and repairs our reputation from the people that have come before us that have caused mayhem and problems in this situation. This particular change to the regulation is not a regulation to regulate but it turns out that it is a regulation to kill. In our industry, being micromanaged in such a way to tell us specifically what we can earn and how we can earn it is burdensome at best. Additionally, there are ways to get around this. What if we just decide to have an open ended contract and just charge by the hour as many law firms do. Ok, we are going to charge you $100.00 per letter that we send out. Or we are going to charge you a couple hundred per hour and this is how we are going to charge per hour and we are going to have an open ended contract. The outcome and the final dollar amount could be unknown. We are just going to an hourly rate. There are ways of getting around this in such a way that what you are doing here is you are going to force us to create new ways to go around the law. This regulation has unintended consequences that nobody in this room really wants to see all of the things that

will come out of this particular change to the system. We are here to help consumers. The bad guys are the banks. I have often said that the best way to put all of these loan modification companies out of business is to have the banks start treating the consumers like they are people instead of like they are slaves. Here, we are trying to help. We are consumer advocates. Everyone in this room is looking to help people. This particular change harms our ability to do business going forward and harms the ability of consumers to get fair and competent representation when dealing with their banks.

Sheila Walther: Ian. This is Sheila. Can I just make a comment? Maybe I am not following. There is an "or" in there. You made the comment that they had to have the modification in place before they can collect 50%. We are saying, because there are sometimes you can just pick the phone up and you will get it right on the spot and maybe there is another phase of the permanent. But delivered to the investor or have an agreement of a trial. So you do not have to have the modification in place in order to collect 50%. I did not know if you saw that "or" in there.

Ian Hirsch: I see that. But it's a very slippery slope when we start managing what you can take and when you can take it. I understand the original regulation said "a reasonable amount." That reasonable amount – and you have gone and audited or examined many, hopefully all, independent licensees out there. This defines more clearly what your interpretation of reasonableness is. It takes the ability of a business owner, running a business to have the ability to negotiate a contract with a private individual and it takes that ability away from us as business owners and as homeowner representatives.

Sheila Walther: We are just trying to be fair to the homeowner too. I am a little surprised because, up here, we have cited every single shop that we have been in that has collected more than 50% before that package is delivered to the investor. So I am a little surprised that maybe it is not being uniformly applied down there. I am a little surprised because this is just codifying what we have been doing since day one.

Ian Hirsch: We take less than 50% prior.

Sheila Walther: Then you are fine, but a lot of them are not, obviously.

Ian Hirsch: Yes, but it is a slippery slope.

Sheila Walther: A lot of them are collecting 75% just meeting with the person, gathering their documents. There is no incentive for doing any more so we are trying to protect homeowners through this clarification of being reasonable.

Commissioner Waltuch: So I have a question for you. Given what we see out in the field, the question is, and I am going to preface this by saying if you are going to steal, you are going to steal and it doesn't matter what is on paper. But assuming you are not going to steal and you are going to abide by the law and the regulations, how do we – do you have an alternative solution for how we keep loan modifications from being totally frontloaded in payment?

Ian Hirsch: It is a valid question. I understand the intent here. I get the intent. My answer on my contract is very clear. It is 40% upon submission. It is another 40% upon additional phasing and the final 20% upon completion of the modification. That is how we break it down. You guys looked at our contract and your have looked at it twice down in two separate examinations. I have been Ok as far as that goes. My concern is that when you start defining specifically what we are allowed to do and codify it like we have done here, I am worried about not what this says here but the natural progression of what we are going to be talking about a year from today in the next workshop where now we are paring down from what this 50% say, now we are going to make it 35%, now we are going to make you jump through this hoop and I am very concerned about that slippery slope. When we start regulating and micromanaging and, again, I understand we are trying to protect consumers. We are here to put regulations on the books that protect the consumers from people that are reckless, people that have violated a certain ethic that we all in here I believe are compliant with. This particular thing is troublesome because it specifically tells me not just what to do, but how to do it and how much it is worth.

Commissioner Waltuch: I understand, but do you have an alternative besides just deleting it? That is the problem.

Ian Hirsch: My feeling is the regulation is good as it stands.

Commissioner Waltuch: So you wouldn't want to see in a regulation something that says 40 – 40 – 20?

Ian Hirsch: You know I would like to reserve the right to change my contract as I see fit and certainly we have changed our agreement. We have a specific performance guaranty in our contract that you have seen where our savings over the first year is greater than the fee they pay us. There are certain things that I have added to the contract – additional protections above and beyond the law. But, again, I would like that to be my decision or the business owners in the room's decision and certainly not having it forced down our throat. Again, I understand the intent. Our intent and your intent should be the same. We are in this together. You don't want to give us a hard time. We don't want to get a hard time. We want to help consumers. You want us to help consumers. That is why we are here, but I understand your concern. But I am very concerned about this slippery slope.

Commissioner Waltuch: Well thank you. Those are good comments and just for the record, after this meeting we will be transcribing these minutes and they will be posted on our website – good to review.

David Krieger with Haines & Krieger Law Firm – Haines & Krieger Loan Modifications: To carry on Mr. Hirsch's point, I think first of all it is very fundamentally important for us to retain our right to contract with our clients. We do happen to have a form retainer in our loan modification company. But every client has potentially different needs and I think we need to reserve some semblance of the right to contract with that person and tailor their needs to their ability to pay and how we want to collect the fee. As far as the drafting, I have a couple of questions. First, the additional language for purposes of this section and collection of more, can we define what collection means? Is this deposit of funds into a trust account or taking of funds out of a trust account and depositing funds into a business account?

Commissioner Waltuch: I would assume it means collection from the – you getting paid – put it that way. So it would be taking it out of the trust account into your operations account.

David Krieger: I think having the legislation drafted a little bit more clearly. Define placing funds into an operating account because a trust account is certainly segregated and should be segregated. Also, I had an issue just two days ago. We submitted a complete investor package to a servicer and it turned out that in that 24 hour period the note had been sold. In fact we fully performed, however, the modification at the point ceased and we had fulfilled at least two stages of our performance under the contract and we now had to go back and essentially resubmit an entire application of that client and again obtain new financial information. I think if we were to permit this legislation, we would be doing twice the work for the same exact result.

Commissioner Waltuch: Does your contract have a provision in there that covers that type or situation or will is shortly have one?

David Krieger: I think both. It has one in there now and I will be reviewing it to make sure it deals with this issue. But I mean that is my concern with this language. It is a couple of things. We don't actually know what is going on behind the scenes. It is impossible to actually enforce this type of legislation. We don't know whether the servicer has actually provided documents to an investor which is more often than not disclosed. We don't really know what happens behind the scenes. So, I think just from an enforcement position, we could not enforce this provision because we don't know whether or not an investor has actually received the package. We know whether or the servicer has received the package.

Commissioner Waltuch: That can be a matter of wording – changing investor to servicer.

David Krieger: I think that would help. But, obviously, our concern here is our fundamental right to contract with our clients.

Commissioner Waltuch: I will ask you the same question that I asked Ian. How do we on paper at least get around frontloading without regulating contract? That is the bottom line.

David Krieger: That is the bottom line. Ultimately it needs to be reasonable. The contracts need to be made in good faith. I don't know that you can regulate percentages. I think that is, like Mr. Hirsch said, a very slippery slope to legislate those bright lines really restrict our ability to provide services to these clients. I think it is potentially a real problem. I think the legislation as it stands right now which allows us to assign a reasonable fee to a reasonable phase is a good standard. It is good legislation. I think this would be very problematic.

Commissioner Waltuch: Thank you. Anybody else wishing to comment?

James Kimsey with Alliance Home Loan Modifications: Following up on Mr. Hirsch and Mr. Krieger, the word investor needs to definitely be replaced by lender beneficiary or servicer in that order. Because most people do not even know who the investor is. The investor is the person who buys and sells the notes behind the scenes and I think by trying to use that particular term it is going to create a problem with compliance. Second, the issue on frontloading, I would happen to agree that it does seem to impinge upon a business's right to contract with his clients. It would be the same analogy as with a car loan. You can only take this percentage this day and this percentage tomorrow. I really interfere with – we still consider it – it's highly regulated, but it is still a free marketplace. The one area that is completely left out of here is independent depository accounts. For instance, if a business had contracted not to receive advanced funds at all and not to place funds in trust at all but instead works with an independent depository institution to receive those funds against which billings are made then that is a completely separate category that is not even thought of in this particular regulation at this time. I do agree with Mr. Hirsch with the problematic increasing of the bond if your trust accounts do increase in their amounts, then we go from $75,000 to $100,000 bonds with increased cost of the replacement. One clarification I would like to make from my previous trip up here on the E&O policies, if an E&O policy – if an act is claimed to have occurred before the cancellation of an E&O policy, the E&O policy can still be attached and exposed. If an E&O policy is cancelled, there can always be a requirement from MLD that any cancellations be notified immediately, same with DMV with the car insurance policy. Just because a policy is cancelled does not mean that there is no liability

or exposure there for the insurance company. Our particular E&O policy, which is two million dollars, has a two year provision that any act prior to cancellation is still potentially exposed for two years after the policy and they will cover it. That is my comments at this time. Thank you.

Commissioner Waltuch: We have another hearing set for 10:30 and I noticed the time. We are encroaching on it very rapidly. Is anybody here for that? Sheila?

Sheila Walther: Yes. I just had two people. We can start a hearing late. We just can not start if early. We will finish up this and then we will start our next one.

Commissioner Waltuch: Let me ask the folks that are down here. Do we have anybody who is here for the 10:30 one? Oh my. We are going to run through this one really fast and we will start the next one hopefully in the next 10 or 15 minutes if that's ok with everybody. Your comments on that section are duly noted. Section 19 on page 22, the two calendar days before the execution of the agreement to give a contract in another language seems to be impacting business. We would like to change it too simultaneously with or maybe at any time prior to. I see heads nodding yes in agreement with that one. The very last change that we have is on the back page. Page 25. What this has to do is add a provision that is found in all of our other statutes as well. It says that basically if you are required to have a license and you did not have a license and you conducted unlicensed activity and then you get a license, we have the ability to either revoke, suspend or whatever for the previous violation. That is what this one does and it conforms it to our other laws. So, are there any other comments?

David Krieger: This relates to something that is actually not in front of us right now. It is 645F.380, the regulation of paralegals essentially non-lawyer assistance. I wanted to get the commission's comments.

Colleen Hemingway: Excuse me. Is this actually in the proposed regulation that we are discussing today?

David Krieger: No it is not.

Colleen Hemingway: We need to stick – we actually need to stick with what has been noticed and what is on topic for today. We can't really transgress that much. I am sorry.

Sheila Walther: You can definitely submit comments and we can consider it. If we do need to hold another workshop we could consider it if you would like that comment to include an agenda for discussion. I know that 052 includes a provision that people that work for an attorney are still subject to licensing and I think that was your reference to this question. But certainly if you would like to provide a written comment and you would like that to be included in the agenda, we would certainly like to do that for you. Possibly we would need another workshop.

Commissioner Waltuch: Or alternatively, feel free to call me. We can talk about it because I know where you are going with this.

David Krieger: Thank you.

Commissioner Waltuch: Any other comments on this proposed regulation?

Chris Giddings with PDQ Printing and Marketing – We are just here as a provider to some of the vendors. I just need to know what additional regulations or requirements modifications if any are being proposed to statutory requirements regarding disclosures on printed, electronic or media collateral designed to create an inquiry is there anything that we need to be looking out for.

Commissioner Waltuch: Again it is not on topic, but I don't think there is anything in today's regulation changes that addresses that. As far as the statutory changes, until the legislature meets in February and decides what they want to do, if anything, I can't tell you. I have no idea. Sorry. Any other comments? Hearing none we will adjourn this workshop. Thank you for attending.

Hearing Adjourned at 10:30 am

Submitted by Susan Slack